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AIM ENGINEERING
& SURVEYING INC

January 31, 2009

To: Miller Electric Company

Copy: Tony Chin

ITS Div

AIM Engineering

Attn: Steve Pristas

P.O.Box 1235

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Lehigh Acres, FL 33970

Ft. Lauderdale, FL 33315

I-75 RTMC and I-75 Corridor FMS and ITS Integration Project

414733-1-52-01; 416412-1-52-01; and 416413-1-52-01

Project DRB Hearing

The Project Dispute Review Board conducted a hearing on January 20, 2009 to allow the parties to make oral presentations regarding whether the Contractor reached Substantial Completion on October 8, 2008.

CONTRACTOR'S POSITION

The Contractor maintains that the Certificate of Substantial Completion issued by the Architect of Record on October 8, 2008 remains valid and certifies that Substantial Completion was indeed reached on October 8, 2008.

The Contractor stated that they met with the Department's representatives to establish the procedures for Substantial Completion. Agreement was reached on what had to be done and they proceeded with the Inspection for Substantial Completion as described in Attachment "F", Section 01770. A letter was sent by the Department's representative confirming that Substantial Completion was reached on October 8, 2008 and the Certificate of Substantial Completion was signed by the Architect, the Contractor and later by HNTB acting as an agent for FDOT.

The Department sent the Contractor a letter dated October 9, 2008 indicating that Substantial Completion had been reached and that exceptions noted (such as punch list items etc.) had to be completed prior to Final Acceptance. On October 13, 2008 the Department rescinded their

October 9th letter and the Certificate of Substantial Completion. In the Department's opinion the requirements of Section 01770 Part 1.3A of the Contract were not complete. The letter then described six of the 15 items contained in Section 01770 Part 1.3A as incomplete and indicated that the defective installation of the metal roof materially affects the operation of the building due to excessive and potentially damaging noises.

The Contractor points out that, while Section 01770 Part 1.3A does indicate a list of 15 items to be completed, it does not require them to be complete prior to the Substantial Completion Inspection and the issuing of a Certificate. The Contractor cites the last sentence of 1.3.A, "List items below that are incomplete in request", as evidence that completion of the 15 items is not a requirement for Substantial Completion. The pertinent pages of Attachment "F" Minimum RTMC Site and Building Guidelines are attached to this Recommendation.

The Contractor maintains that the metal roof design is what the Request for Proposal (RFP) calls for and that it is installed correctly and should not prevent Substantial Completion. When the Department can tell the Contractor what additional requirements they need to meet they will discuss the time and cost impacts with the Department.

An issue developed on the project over the acoustics in the completed control room. The Contractor's position is that they have complied with the requirements of the RFP and the Department needs to define what sound limits they need and work with the Design-Build team to implement them.

In summary, the Contractor's position is that they complied with the Contract requirements for Substantial Completion on October 8, 2008.

DEPARTMENT'S POSITION

The Department's representative and the C E I met with representatives of the Design-Build Firm, Miller Electric Company, the Architect and The Haskell Company and performed a Substantial Completion Inspection of the RTMC Building on October 8, 2008. After the inspection, a meeting was held and a mutually acceptable list of items that were to be completed/corrected in 60 days was agreed upon. The Engineer advised Miller that Substantial Completion had been achieved via a letter on October 9, 2008.

The Substantial Completion was rescinded by the Department through HNTB's letter of October 13th. One reason given for rescinding was "items listed (six were listed) in Attachment "F" Section 01770, Part 1.3 of the Contract were not complete". A second reason was Miller's declining to accept resolution of the traffic control center acoustical sound issues within 60 days.

The Department testified at the hearing that they consider several of the six items cited as incomplete to be significant enough to render the building unavailable for its intended use and, thus, not substantially complete.

BOARD FINDINGS

The Board has reviewed the submittals and rebuttals by the Contractor and the Department, as well as the oral presentations. The Contractor feels that they had complied with the Contract documents and did reach Substantial Completion on October 8, 2008.

The Department cited the requirements of Section 01770 Part 1.3A that lists 15 items that they interpret must be completed before the Substantial Completion Inspection. The Department also stated that the metal roofing portion of the building had been installed incorrectly and that the acoustics in the control center are unacceptable.

Attachment "F" Section 01770 Part 1.3A states:

- A. Preliminary Procedures: Before requesting inspection for determining date of Substantial Completion, complete the following. List items below that are incomplete in request. It then lists 15 items.

Part 1.4 FINAL COMPLETION

- A. Preliminary Procedure: Before requesting final inspection for determining date of Final Completion, complete the following:
 - 1. Submit a final Application for Payment.
 - 2. Submit certified copy of Architects Substantial Completion inspection list of items to be completed or corrected (punch list), endorsed and dated by the Architect. The certified copy of the list shall state that each item has been completed or otherwise resolved for acceptance.

The Board finds that the contract, in stating "list items below that are incomplete in request", provides for and anticipates Substantial Completion without all 15 items being complete. The language of Part 1.4, Final Completion, clearly indicates that items may not be completed at the time of Substantial Completion but are to be completed prior to Final Acceptance. Thus, the Board finds that the Department had no basis under Section 1.3A to deny or rescind Substantial Completion because certain Section 1.3A items were incomplete.

The Board accepts the industry standard that Substantial Completion occurs when the Contractor has provided a building that can be occupied and used for its intended purpose. The evidence presented indicates that all parties involved directly and intimately with the building agreed on October 8, 2008 that the building was substantially complete, since the inspection for

Substantial Completion was performed and the certificate of Substantial Completion subsequently issued.

The Board has considered each of the six Section 1.3A "deficiencies" cited as reasons for rescinding substantial completion and finds it is in agreement with the position of the Architect and the Department on October 8th that none of them prevent useful occupation. The Board finds that the six items, as well as the metal roof noise and control room acoustics issues, should not prevent Substantial Completion and fall under the issues contemplated in the Contract to be resolved between Substantial Completion and Final Acceptance.

The Board recommends that the Substantial Completion date of October 8, 2008 be upheld by the Department.

Signed by the Chairman with agreement of all members.

A handwritten signature in black ink, appearing to read "Peter A. Markham", written in a cursive style.

Peter A. Markham, P.E., Chairman

Att: Attachment "F" Minimum RTMC Site and Building Guidelines

The Board relied on the industry standard for Substantial Completion because the contract does not define the term. In the absence of a contract definition, the Board agreed that the description of Substantial Completion contained in the AIA Document G704 that was executed by the Contractor and CEI is the industry standard the members are accustomed to.

Substantial Completion is discussed throughout Section 01770 in a manner consistent with the AIA description. Thus, the Board found it appropriate to apply the industry standard.

The Board found the six items of 01770 – 1.3A cited by FDOT to be typical of those closeout tasks relegated to the period between Substantial Completion and Final Completion and not items that prevent “intended use”. The members relied on the statement “List items below that are incomplete in request” as evidence the contract did not intend nor require the 15 items to be complete to reach Substantial Completion.

Regarding the metal roof and control room acoustics issues, the evidence presented did not convince the Board that MECO failed to provide what the contract and RFP call for. The facts that there are no special acoustic requirements in the RFP for the control room and the Department had sought to do a study of the acoustics in the completed structure led the Board to conclude the acoustics issue is not relevant to substantial completion.

SECTION 01770 – PROJECT CLOSEOUT PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Attachment A - RTMC Site and Building Design Criteria; Attachment B - RTMC Site and Building Drawings; and Attachment F - Volume 1 Minimum RTMC Site and Building Guidelines apply to this section.

1.2 SUMMARY

- A. This Section includes administrative and procedural requirements for contract closeout, including, but not limited to, the following:
 - 1. Inspection procedures.
 - 2. Warranties.
 - 3. Final cleaning.
- B. See Sections 02000 through 16000 for specific closeout and special cleaning requirements for the Work in those Sections.

1.3 SUBSTANTIAL COMPLETION

- A. Preliminary Procedures: Before requesting inspection for determining date of Substantial Completion, complete the following. List items below that are incomplete in request.
 - 1. Prepare a list of items to be completed and corrected (punch list), the value of items on the list, and reasons why the Work is not complete.
 - 2. Advise Department of pending insurance changeover requirements.
 - 3. Submit specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents.
 - 4. Obtain and submit releases permitting Department unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.
 - 5. Prepare and submit Project Record Documents, operation and maintenance manuals, Final Completion construction photographs, damage or settlement surveys, property surveys, and similar final record information.
 - 6. Deliver tools, spare parts, extra materials, and similar items to location designated by Department. Label with manufacturer's name and model number where applicable.
 - 7. Make final changeover of permanent locks and deliver keys to Department. Advise Department's personnel of changeover in security provisions.
 - 8. Complete startup testing of systems.
 - 9. Submit test/adjust/balance records.
 - 10. Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.

11. Advise Department of changeover in heat and other utilities.
 12. Submit changeover information related to Department's occupancy, use, operation, and maintenance.
 13. Complete final cleaning requirements, including touchup painting.
 14. Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.
 15. Instruct Department's personnel in operation, adjustment, and maintenance of products, equipment, and systems.
- B. Inspection: Submit a written request for inspection for Substantial Completion. On receipt of request, Architect, along with Department's Agent, will either proceed with inspection or notify Contractor of unfulfilled requirements. Architect will prepare the Certificate of Substantial Completion after inspection or will notify Contractor of items, either on Contractor's list or additional items identified by Architect, that must be completed or corrected before certificate will be issued.
1. Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.
 2. Results of completed inspection will form the basis of requirements for Final Completion.

1.4 FINAL COMPLETION

- A. Preliminary Procedures: Before requesting final inspection for determining date of Final Completion, complete the following:
1. Submit a final Application for Payment.
 2. Submit certified copy of Architect's Substantial Completion inspection list of items to be completed or corrected (punch list), endorsed and dated by Architect. The certified copy of the list shall state that each item has been completed or otherwise resolved for acceptance.
 3. Submit evidence of final, continuing insurance coverage complying with insurance requirements.
 4. Submit pest-control final inspection report and warranty.
- B. Inspection: Submit a written request for final inspection for acceptance. On receipt of request, Architect and Department's Agent will either proceed with inspection or notify DESIGN-BUILD FIRM of unfulfilled requirements. Department or Department's Agent will prepare a final Certificate for Payment after inspection or will notify DESIGN-BUILD FIRM of construction that must be completed or corrected before certificate will be issued.
1. Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

1.5 LIST OF INCOMPLETE ITEMS (PUNCH LIST)

- A. Preparation: Submit four (4) copies of list. Include name and identification of each space and area affected by construction operations for incomplete items and items needing correction including, if necessary, areas disturbed by that are outside the limits of construction.

October 13, 2008

Via email: spristas@mecojax.com

**Miller Electric Company
1881 State Road 84, Suite 104
Ft. Lauderdale, Fl 33315**

HNTB



ALLIED ENGINEERING
& TESTING, INC.

Attention: **Mr. Steve Pristas, Project Manager**

Subject: **RESCIND LETTER # 136**

F.P.I.D Nos.: **414733-1-52-01; 416412-1-52-01; 416413-1-52-01**

F.A.P Nos.: **8887 029 A; 8887 030 A; 8887 031 A**

Contract #: **E1E73**

Project: **I-75 REGIONAL TRANSPORTATION MANAGEMENT CENTER (RTMC), I-75 CORRIDOR
FREEWAY MANAGEMENT SYSTEM, AND INTELLIGENT TRANSPORTATION SYSTEM (ITS)
INTEGRATION, DESIGN-BUILD PROJECT**

Dear Mr. Pristas:

We are rescinding both the Certificate of Substantial Completion (AIA Document G704 – 2000) that was signed and dated October 8, 2008, and Partial Acceptance of the SWIFT SunGuide Center building as they were not issued in compliance with the contract documents.

The following items listed in Attachment “F” Section 01770 Part 1.3 of the contract were not complete and therefore nullify both the Partial Acceptance and the Certificate of Substantial Completion:

1. (Item 1) Each item in the list of items to be completed and corrected (punch list) did not have an individual value attached to them, nor were there reasons why the Work was not completed.
2. (Item 3) Submittal of Warranties is not complete.
3. (Item 5) Submittal of all Project Record Documents is not complete.
4. (Item 6) All tools, spare parts required by specific specification sections have not been properly labeled, listed and accounted for.
5. (Item 9) Test/Adjust/Balance Reports have not been submitted.
6. (Item 13) Touch up painting being completed, Final Clean not yet done.

In addition, the defective roof installation materially affects the operation of the building due to excessive and potentially damaging noises. The roof must be repaired prior to Substantial Completion.

Per your emails dated October 10, 2008, you noted:

(1) *“Miller will be contacting our lawn service sub to stop all lawn maintenance. Please make arrangements to maintain the property from this point forward”* As we responded, this item was not part of the agreement during our discussions, and therefore Miller must continue to fulfill its contractual obligations in this regard.

(2) *“Miller takes exception to item number 2 listed on the attached under “Contractor Items to be Completed/Corrected.”* The fact that you have taken exception to these items also nullifies the certification dated October 8, 2008.

Below is the list of submitted items that are deemed acceptable under Attachment “F” Section 01770 Part 1.3:

1. (Item 2) *Notification was given (date).*
2. (Item 4) *Certification of Occupancy dated 04/08/2008 has been submitted*
3. (Item 8) *All systems have been started up and successfully tested.*
4. (Item 10) *There are still DMS signs in the parking lot of the SWIFT facility.*
5. (Item 11) *Contractor has advised Department of changeover of utilities.*
6. (Item 12) *This item as described is included in the other items listed here.*
7. (Item 14) *Included in Item 13 above.*
8. (Item 15) *All scheduled building training has been completed.*

Please continue to correct the deficiencies and punch list items as well as maintain building insurance and utilities until which time FDOT can re-assess your request to sign a Certificate of Substantial Completion.

Sincerely,
HNTB Corporation



Gordon Ziecina, P.E.
Senior Project Engineer

cc: Jonathan M. Sands, D1 Construction
L. K Nandam, D1 Traffic Operations
Terry Muse, D1 Construction
Chris Birozak, D1 Traffic Operations
David Holden, FMOC
Gerry Byrne, FMOC
Mary Wiley, FMOC
Katherine Duvall, D1 Traffic Operations
Carlos Bonilla, D1 Traffic Operations
Dennis Hall, D1 Facilities Manager
Tony Chin, Project Administrator
Tom Deer, AIM Engineering
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